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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,501	01/08/2001	Ole Markmann	D078 1100	5324

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EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/701,501	Applicant(s) MARKMANN ET AL.	
	Examiner Sheeba Ahmed	Art Unit 1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 5, 7, and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicants response to the last Non-final Office Action was received on November 18, 2005. No amendments have been made to the claims. **Claims 1, 3, 4, 5, 7, and 17 are now pending.**

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 5, 7, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobry et al. (US 2,962,081) in view of Applicants own admission.

Dobry et al. disclose plastic composition sheets that are adapted for use as floor coverings wherein the process of making such a plastic composition sheet entails depositing uniformly on a backing material a smooth layer of a mixture of fine particles and flat plastic chips (Column 1, lines 49-65). The plastic chips are about 0.18 to 1.0 inches in diameter (equivalent to 4.57 to 25.40 mm) and have a thickness of 0.01 to 0.025 inches (equivalent to 254-635 microns) (Column 2, lines 37-45). The process of the disclosed invention is applicable to various types of plastic compositions used in surface coverings including linoleum (Column 2, lines 71-72). If the plastic composition is linoleum then the linoleum is composed of drying oils, resin, fillers and pigments. The

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oil can be linseed oil. The resin can be rosin or ester gum. The thickness of the plastic layer can be varied and is typically 0.02 to 0.06 inches in thickness (Column 6, lines 11-31, 70-75). Typical of other suitable resins are polymethyl methacrylates (Column 5, lines 27-30). Figure 2 is a cross-sectional view of the surface covering and specifically shows that the plastic chips (10) are imbedded in the matrix of fine granules (11) and wherein a backing material (20) is also present.

Dobry et al. do not state that the rolled linoleum sheet is cut, rotated, and stacked.

However, the last paragraph of Page 2 of the instant application states that in a typical process of making a linoleum sheet mixed masses produced from the standard linoleum raw materials, e.g. linoleum cement, wood flour, powdered cork, chalk, white pigment and colored pigments, are mixed in defined proportions as a function of the desired pattern and are fed into a roll mill in the form of a carded mixed mass. The multicolored speckled linoleum sheet thus obtained (about 1.6 m wide) is divided into pieces about 2 m long and arranged scale-like in the form of a multilayer sheet stack. The oriented speckling of the individual sheets extends perpendicularly to the calendering process direction in the further manufacturing process. The sheet stack is now fed into the nip of a calender and rolled with friction into the desired thickness of the top layer.

Hence, it would have been obvious to one having ordinary skill in the art to cut, rotate, and stack the rolled linoleum sheet taught by Dobry et al. given that the

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Specification of the instant application states that these are typical steps employed in the manufacture of linoleum sheets.

Response to Arguments

3. Applicant's arguments filed on November 18, 2005 have been fully considered but they are not persuasive. Applicants traverse the rejection of claims 1, 3, 4, 5, 7, and 17 under 35 U.S.C. 103(a) as being unpatentable over Dobry et al. (US 2,962,081) in view of Applicants own admission and submit that when Dobry forms their linoleum sheet, it is formed by completely covering a backing material, not a rolled linoleum sheet. Applicants state that there is no teaching in Dobry to form a rolled linoleum sheet and thereafter warp-free press mixed mass particles into the linoleum sheet. The Examiner would like to point out that the instantly claimed invention does not preclude the presence of the a backing material. Claim 1 simply recites a process comprising the steps of: dispersing at least one type of mixed mass particles onto ***at least one side of a rolled linoleum sheet***, and substantially warp-free pressing the mixed mass particles into the rolled linoleum sheet such that the particles are not substantially distorted. Such a recitation does not preclude the presence of a backing sheet.

Applicants further assert that the present invention uses linoleum mixed mass particles that are present in the form of a granular dispersion mass and that Dobry does not teach such a granular form. However, it is noted that the features upon which Applicants are relying (i.e., linoleum mixed mass particles that are present in the form of a granular dispersion mass) are not recited in the rejected claims. Although the claims

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are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Hence, the above rejections are maintained.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Mondays and Thursdays from 9:30am to 6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sheeba Ahmed

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February 21, 2006